



GSA Federal Acquisition Service

February 8, 2013

FAS INSTRUCTIONAL LETTER 2013-02**MEMORANDUM FOR ALL FAS ACQUISITION ACTIVITIES**

FROM:

HOUSTON W. TAYLOR
ASSISTANT COMMISSIONER
OFFICE OF ACQUISITION MANAGEMENT (QV)

A handwritten signature in blue ink, appearing to read "H. Taylor", is written over the typed name and title.

SUBJECT:

Standardized Process for Monitoring Compliance with
Federal Supply Schedule Contract Sales Criteria

1. Purpose. The purpose of this Instructional Letter (IL) is to implement a standardized process for the monitoring of vendor sales across the Federal Supply Schedule (FSS) program. The overarching goal of this new process is to facilitate post-award success, to better meet customer needs, and to increase utilization of the FSS program, with a focus on small business vendors in particular. Specifically, this process will assist contracting officers by providing a consistent method for ensuring continued compliance with the requirements of clause I-FSS-639 *Contract Sales Criteria* ("Contract Sales Criteria clause") throughout the life of the contract.
2. Background. Clause I-FSS-639 *Contract Sales Criteria* (MAR 2002) states the following:
 - a) A contract will not be awarded unless anticipated sales are expected to exceed \$25,000 within the first 24 months following contract award, and are expected to exceed \$25,000 in sales each 12-month period thereafter.
 - b) The government may cancel the contract in accordance with clause 552.238-73, Cancellation, unless reported sales are at the levels specified in paragraph (a) above.

In 2011, the Federal Acquisition Service (FAS) reviewed vendor sales under 18,146 FSS contracts. The scope of this review consisted of contracts awarded between October 1, 2004, and September 30, 2010 (i.e., Fiscal Years 2005 through 2010). Based on the Contract Sales Criteria clause, 58 percent of these vendors did not consistently meet minimum sales requirements. The study also revealed –

- Inconsistent cancellation policies
- Limited contract file documentation in support of cancellation decisions
- The absence of a consistent cancellation process for nonperforming vendors

Results validated the need to establish a standardized process that incorporates

education, empowerment, and a more effective strategy for ensuring consistent and ongoing communication regarding contract sales compliance. FAS intends to meet these objectives through the development of informational webinar sessions, the creation of additional vendor tools, and the implementation of an automated email notification system.

The overarching goal of this new process is to facilitate post-award success, to better meet customer needs, and to increase utilization of the FSS program, with a focus on small business vendors in particular. FAS will continue to look for ways to further streamline post-award contract administration processes in order to maximize effective use of acquisition resources as well as provide vendors with clear, consistent expectations.

3. Effective Date. Date of signature.
4. Expiration Date. This IL remains in effect until it is cancelled.
5. Applicability. This IL applies to all FAS contracting activities awarding and administering FSS contracts.
6. Reference. [GSAR 552.238-73 Cancellation \(SEP 1999\)](#), and [I-FSS-639 Contract Sales Criteria \(MAR 2002\)](#). This IL replaces [Procurement Information Notice 2007-03 Low-No Sales MAS Cancellations](#).
7. Instructions/Procedures. This new process provides a consistent method for ensuring continued compliance with the requirements of the Contract Sales Criteria clause throughout the life of the FSS contract. It begins with a series of automated email notifications, which are auto-generated by FSS Online, at specific points during the first two years of the contract period. These email notices provide vendors with clear expectations related to contract sales as well as tips for successful performance. In addition to streamlining an otherwise time-consuming contract administration function, these communications also build supporting documentation for the contract file, facilitating the enforcement of the Contract Sales Criteria clause when necessary.

Consistent with the terms of the clause, when a vendor does not report at least \$25,000 in sales within the first 24 months following contract award or during each 12-month period thereafter, a cancellation modification will be automatically prepared in FSS Online. The Procuring Contracting Officer (PCO) will be notified of the pending modification via email and is required to make a final decision regarding cancellation. The PCO may either –

- I. Execute the cancellation modification: The PCO will be required to enter the rationale for cancellation in the provided freeform text box. Upon execution, FSS Online will automatically email the modification and a template cancellation notice to the vendor.
- II. Decline the cancellation modification: The PCO has the authority to decline the cancellation modification if doing so is determined to be in the best interest of the Government. The PCO will be required to provide the rationale for this decision either by selecting a reason from the drop-down menu or by utilizing the freeform text box.

Roles and Responsibilities

Procuring Contracting Officer: The PCO is responsible for engaging vendors in ongoing, meaningful communication regarding FSS contract sales requirements and for documenting the file with records of phone conversations, email correspondence, etc.

When a contract is identified for noncompliance with sales requirements, the PCO at a minimum should consider the following before making a final decision regarding cancellation:

- Has the vendor submitted quotes in response to RFQs posted on eBay, FedBizOpps, etc.? If so, how many?
- Is the vendor currently in the middle of a competition, i.e., might soon receive a task/delivery order that brings the contract into sales compliance?
- Does the vendor have a bid-and-proposal budget?
- Does the vendor have a recently-awarded task/delivery order and/or unreported contract sales that will bring the contract into sales compliance?
- Does the vendor fall under a small business subcategory (e.g., HUBZone, Service-Disabled Veteran-Owned, etc.) that has limited representation for a particular FSS item(s), where cancellation could have the consequence of making set-aside orders difficult to place?
- Does the Industrial Operations Analyst's (IOA's) Contractor Assistance Visit (CAV) report indicate that reported sales amounts are accurate?

The PCO is required to ensure that all documents related to discussions of noncompliance with the Contract Sales Criteria clause are uploaded to the Electronic Contract File (ECF) and filed in accordance with the Contract Tab Advisory Guide (CTAG) under the General Documents tab.

Industrial Operations Analyst: The IOA conducts Contractor Assistance Visits at the vendor's worksite, assessing compliance with the terms of the FSS contract and offering advice on how to be a successful contractor. Contractor Assistance Visits occur at least twice during each five-year contract period.

Administrative Contracting Officer (ACO): The ACO provides educational assistance to FSS vendors and reviews CAV Reports completed by the IOA.

8. Questions and Answers.

Q1. How will the automated email notification system work?

A1. Automated correspondence will be generated and emailed to vendors by FSS Online according to the milestone schedule and compliance parameters below. PCOs are encouraged to have additional discussions with vendors regarding low or no sales

throughout this process and are required to document the contract file accordingly.

Contract Years 1 & 2

Milestone 1: 7 months after contract award

Action: Vendor receives sales compliance and outreach letter

Purpose: Reminder of Contract Sales Criteria clause requirements

Parameters: None - sent to all vendors

Milestone 2: 12 months after contract award

Action: Vendor receives reminder regarding contractor sales requirements

Purpose: Expresses concern regarding possibility that vendor will not comply with requirement to report at least \$25,000 in sales during the first 24 months following award. Provides tools and resources available to assist vendors in garnering sales.

Parameters: Only sent to vendors with reported sales < \$12,500 at the 12-month mark.

Milestone 3: 19 months after contract award

Action: Vendor receives notice that contract is being considered for cancellation

Purpose: Reminder that GSA may cancel the contract if vendor does not meet minimum sales criteria. Provides tools and resources available to assist vendors in garnering sales.

Parameters: Only sent to vendors with reported sales < \$25,000 at the 19-month mark

Milestone 4: 24 months after contract award

Action: Cancellation modification is automatically prepared by FSS Online. PCO receives email notification of pending modification. If modification is executed, vendor receives a template cancellation letter and a copy of the modification.

Parameters: FSS Online will generate a cancellation modification for PCO action when reported sales are less than \$25,000 at the 24-month (two-year) mark.

Contract Years 3 through 19

Milestone: 3 years after contract award and at one-year intervals thereafter* through Year 19

Action: Cancellation modification is automatically prepared by FSS Online. PCO receives email notification of pending modification. If modification is executed, vendor receives a template cancellation letter and a copy of the modification.

Parameters: FSS Online will generate a cancellation modification for PCO action when reported sales are less than \$25,000 during the preceding 12-month period.

* Does not apply at Contract Years 5, 10, or 15, since the process for the exercise of the next five-year option period already takes contract sales compliance into consideration.

Q2. When will this new process go into effect?

A2. FSS Online will begin generating automated emails to vendors and cancellation modifications for PCO action beginning in February 2013.

Q3. How will these system changes affect existing FSS contracts?

A3. Once the new contract sales criteria functionality is activated in FSS Online, automated emails will be generated and cancellation modifications prepared for PCO action at the milestones detailed under Q1/A1. So, for example, if a contract is halfway through Year 6 as of the time of activation in February 2013, FSS Online will not check for sales criteria compliance until the next one-year interval (i.e., at Year 7).

Q4. Where will the automated email notifications be filed?

A4. Automated email correspondence will be automatically uploaded to the ECF and filed under the General Documents tab.

Q5. If the PCO opts to decline the FSS-Online-generated cancellation modification, what rationale choices does the drop-down menu include?

A5. The PCO has the following choices:

- a. I believe the contractor has demonstrated substantial effort towards meeting required sales, and in time will meet the threshold.
- b. Contractor has provided proof of realized but unreported sales which are adequate to meet the sales threshold.
- c. Contractor operates as a sub-contractor under a prime, and therefore has no reported sales of its own.
- d. Contractor holds an MAS contract solely for the purpose of obtaining other contract opportunities (ex. TexMAS).
- e. Other [opens a freeform text box that allows the PCO to input an alternate reason and/or additional notes]

The selected rationale will be automatically uploaded to ECF and filed under the General

Documents tab. This will ensure that the contract file is documented with the reasoning behind the PCO's decision to retain the vendor.

Q6. Will acquisition workforce training be provided?

A6. The Office of Acquisition Management will be hosting several live webinars on this topic. Scheduled dates for this webinar will be provided by your FAS portfolio Acquisition Operations Director. The webinar will include detailed information on the new standardized process for monitoring compliance with contract sales criteria, templates for responding to Congressional inquiries, and suggested guidelines when calling vendors to discuss cancellation. These sessions will also include a live question-and-answer period.

Q7. Where can I find reference materials and the recording of the training regarding the new process for monitoring contract sales compliance?

A7. Reference materials are posted on the Electronic Centralized Acquisition Tool (eCAT) site at: [Schedules Contract Sales Compliance Training, Tools, and Templates](#)

Q8. Where can FSS vendors find tools for post-award success?

A8. Tools for post-award success can be accessed via the Vendor Support Center at <https://vsc.gsa.gov/>.

Q9. Will a pilot be conducted before full implementation?

A9. No - Once FSS Online functionality is activated in February 2013, this new automated process will apply to all FSS contracts.

Q10. How will the new process for monitoring compliance with contract sales criteria be measured?

A10. QV will run monthly data queries on the number of low/no-sales contracts cancelled (per FAS Portfolio and per Schedule). QV will also create a dashboard displaying progress and outcomes from the implementation of this new process.

Specific measures will be developed and shared with each Portfolio once they are finalized.

Q11. Isn't this new process in conflict with the ACO Notification/Delegation automatically generated by FSS Online?

A11. ACO notification/delegation templates are in the process of being updated. In the meantime, prior to execution of a cancellation modification, the PCO should consult with the ACO and IOA.

Note also that though current delegation templates indicate that ACO authority includes "Cancellation of contract with PCO concurrence for insufficient sales pursuant to Clause I-FSS-639, Contract Sales Criteria," this authority is not exclusive to the ACO. The PCO has always had the authority to cancel FSS contracts for insufficient sales.